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JUDICIAL RESTRAINTS UPON TRADE COMPETITION. — A decision of the supreme court of Alabama is instructive in its relation to the question of unfair competition. The plaintiff, a water company, filed a bill against the city of Mobile, a corporation operating a system of waterworks and sewers for itself and its inhabitants. The bill alleged that the defendant unjustly discriminated against the patrons of the plaintiff by charging them the same price for sewerage service alone, that it charged the public for water and sewerage service together, thereby causing the patrons of the plaintiff to discontinue taking the plaintiff's water. The bill prayed for an injunction against such discrimination in the future, and the decree of the lower court granting an injunction was affirmed upon appeal. *City of Mobile* v. *Bienville Water Supply Co.*, 30 So. Rep. 445. The interesting feature of the case is that the injunction was obtained not by a person discriminated against, but by a rival company which by reason of the discrimination was threatened with the loss of its business. The case therefore stands for the proposition that a corporation engaged in a public employment may not build up its own business by discriminating against persons trading with a rival, and a rival damaged by such action may have it enjoined although not itself the direct victim of the discrimination.

The dividing line between fair and unfair competition has never been clearly indicated and it is impossible to mark it off with anything like precision. An early case decided that an action lay against a rival who injured the plaintiff's business by the intimidation of his prospective patrons. *Tarleton* v. *M'Gawley*, Peake 205. The trade union cases are every day illustrations of the doctrine that violence actual or threatened against persons trading with or employed by the plaintiff is a legal injury to him if resulting in damage to his business. The trade mark and trade

name cases show that the deceiving of the public by the counterfeiting or simulation of the plaintiff's goods resulting in his damage may be enjoined by him. *Reddaway* v. *Banham*, [1896] A. C. 199. Another example of an act tortious as regards a third person and resulting in damage to the plaintiff's trade being held within the principle of unfair competition is *Hughes* v. *McDonough*, 43 N. J. Law 459. On the other hand not every act tortious as regards prospective customers of the plaintiff, and resulting in damage to his business, will be enjoined at his request. Deceit of the public as to the quality of goods, false testimonials and untrue representations of fact, although drawing away trade that otherwise would go to the plaintiff do not entitle him to the intervention of the courts. *American Washboard Co.* v. *Saginaw Manufacturing Co.*, 103 Fed. Rep. 281.

The question is one of sound public policy and practical expediency. On the one hand should be considered the necessity of protecting a man's right to that trade which he has built up by his industry and enterprise, a right of property, possessing commercial value and frequently bought and sold. On the other hand lies the danger of opening too wide a field of litigation and extending the range of tort liability too far beyond those persons against whom the wrongful acts are primarily directed. The principal case is one about which no difference of opinion will arise as to the expediency and good policy of equitable intervention. Corporations engaged in public employments should not be permitted to build up their own or another's business by the abuse of those powers with which, by reason of the nature of their calling, they have become invested. The discrimination complained of in the principal case was clearly such an abuse. The fact that under the circumstances the persons directly discriminated against were not likely to complain rendered the damage to the plaintiff all the more certain and the good policy of the court's intervention all the more clear.

THE CARE REQUIRED OF DIRECTORS. — Whatever may be the precise relation of directors to their corporation, their direct responsibility is to the corporation. On insolvency, the right to hold them accountable passes to the receiver. 3 THOMP., CORP., § 4121. In a recent case in New Jersey, the directors of a bank were held liable to the receiver for loss resulting from negligence in supervising the management of the bank. *Campbell* v. *Watson*, 50 Atl. Rep. (N. J. Ch.) 120. The principal negligence complained of was a failure to make examinations with the frequency stipulated in the by-laws, and especially a total failure to look at the balance sheets returned by a correspondent bank, in consequence of which the cashier was able to draw drafts for amounts in excess of those entered on the books.

It has been suggested that directors should be liable only for gross negligence. *Swentzel* v. *Penn Bank*, 147 Pa. St. 140. It is said that they are gratuitous mandataries, and cannot be expected to give a great amount of attention to the position. If they are held strictly accountable, no honest man will desire to accept the position. *Spering's Appeal*, 71 Pa. St. 11. On the other hand it is urged that such a test would allow directors to give a corporation credit by the use of their names, while remaining practically figureheads. Accordingly the rule of reasonable care